

Applicant: Eiji Nakai  
Serial No.: 10/806,606  
Filing Date: March 23, 2004  
Docket No.: 362-92  
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### **REMARKS**

The last Office Action in the above-identified application and the references cited by the Examiner have been carefully considered. Applicant respectfully submits the following remarks in support of the patentability of the claims in their present form.

Claims 1 and 3-16 are pending in the application. Claims 1 and 3-8 have been rejected under 35 U.S.C. 103(a) as being obvious in view of the combination of U.S. Patent Application Publication No. 2002/0126993 (Sakuramoto, et al.), which was previously cited by the Examiner, and U.S. Patent No. 7,017,078 (Frimout), which is a new reference cited by the Examiner. Claims 9 and 13-16 have been rejected under 35 U.S.C. 102(e) as being anticipated by the Sakuramoto, et al. published application. Furthermore, Claims 10-12 have been rejected under 35 U.S.C. 103(a) as being obvious in view of the combination of the Sakuramoto et al. published application and the Frimout patent.

The Examiner's kind comments with respect to the rejection of the claims found on Pages 2-8 of the Office Action are acknowledged and gratefully appreciated.

The rejection of Claims 1 and 3-16 in view of the references cited by the Examiner is respectfully traversed. In Applicant's last Reply to Office Action dated April 19, 2010, the contents of which are incorporated herein by reference, and in the Reply to Final Office Action dated September 9, 2009, the contents of which are incorporated herein by reference, and during the undersigned attorney's telephonic interview with Examiner Tekle on March 18, 2010, it was explained to Examiner Tekle that the Sakuramoto, et al. published application is directed to a data reproducing device, and that the claimed invention is specifically directed to a data recording device. Examiner Tekle agreed with the undersigned attorney during a further conference which took place on April 15, 2010, where Examiner Tekle related that he spoke with his supervisor and they both agreed that the claimed invention differs from the device disclosed in the Sakuramoto, et al. published application in this regard. Accordingly, Applicant strongly requests the Examiner to withdraw the Sakuramoto, et al. published application as a reference.

More specifically, in this latest Office Action, the Examiner continues to characterize the invention disclosed in the Sakuramoto, et al. published application as a “content recording apparatus”, which is a mistake, especially in view of the Examiner’s acknowledgement that the Sakuramoto, et al. published application is directed to a data reproducing device, and not a data recording device.

Furthermore, with particular respect to Claims 9 and 13-16, the Examiner contends that the Sakuramoto published application discloses all of the features set forth in independent Claims 9, 14 and 15, and in dependent Claims 13 and 16, and the Frimout patent is not even cited against Claims 9 and 13-16. In this regard, the Examiner essentially copied his rejection of these claims based solely on the Sakuramoto, et al. published application that he stated in the final Office Action dated June 9, 2009 and the non-final Office Action dated December 17, 2009. Yet, Examiner Tekle and his supervisor both agreed that the claimed invention is a data recording device, while the Sakuramoto, et al. patent is directed to a data reproducing device.

Examiner Tekle further conveyed to the undersigned attorney on April 15, 2010, that he will most likely allow the application if he does not find another reference which discloses the claimed features. With respect to Claims 9 and 13-16, no new reference was cited. The Frimout patent was not applied against these claims.

During the interview with Examiner Tekle that took place on March 18, 2010, and as reiterated in Applicant’s Reply to Office Action dated April 19, 2010, it was pointed out that the Sakuramoto, et al. device interrupts the recording of data in order to periodically sample the physical location on the disk where the data is being recorded, and that this is not done in the claimed invention and that there is no interruption in the recording of data. It was further pointed out that the Sakuramoto, et al. device does not divide the work memory 3 into a plurality of data files, as is claimed, and there is no marker which indicates that recording has been completed for each data file, nor is there a determiner to determine if the marker exists, in the Sakuramoto, et al. device. Accordingly, since Claims 9 and 13-16 have only been rejected in view of the Sakuramoto, et al. published application, and since the Examiner has not pointed out anywhere

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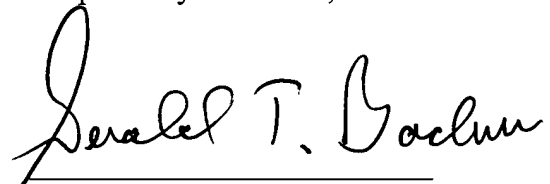
in the Sakuramoto, et al. published application where such features set forth in these claims are found, it is respectfully urged that Claims 9 and 13-16, which have only been rejected in view of the Sakuramoto, et al. published application, be allowed. Such action is respectfully solicited.

The newly cited Frimout patent discloses a method for power failure recovery, especially data recovery. This is contrary to the presently claimed invention, which is directed to the detection of a record start position. The Frimout method has nothing to do with detecting a record start position.

Accordingly, it is respectfully urged that Claims 1 and 3-16 patentably distinguish over the Sakuramoto, et. al. published application and the Frimout patent, taken alone or in combination, for these reasons and for the reasons submitted previously during the interview with Examiner Tekle and stated in Applicant's Reply to Office Action dated April 19, 2010 and Reply to Final Office Action dated September 9, 2009.

In view of the foregoing remarks, favorable reconsideration of Claims 1 and 3-16 and allowance of the application with Claims 1 and 3-16 are respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, reading "Gerald T. Bodner". The signature is written in a cursive style with a large initial "G".

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